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Robert R. Corbin

January 22, 1990

The Honorable Bev Hermon
State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I90-014 (R89-152)

Dear Representative Hermon:

You have asked who must pay for the independent evaluation authorized pursuant to A.R.S. § 15-310 (education of children being instructed at home), the county school superintendent or the person who has custody of a home-schooled student. We conclude that the reasonable cost of the independent evaluation is a charge against the county as a necessary expense incurred in the conduct of the office of the county school superintendent.

The county school superintendent is an officer of the county. A.R.S. § 11-401(A)(4). He has such powers and duties as are enumerated in A.R.S. §§ 15-302 and 15-308 [formerly § 15-142], A.R.S. § 11-511, and as are otherwise prescribed by law, A.R.S. § 15-302(8).

A.R.S. § 15-310(B) requires the superintendent to annually review standardized achievement test results of home-schooled students. If the superintendent determines that the test results indicate a particular student is not progressing academically, the superintendent must designate a qualified independent evaluator to ascertain whether the exemption from compulsory school attendance, required by A.R.S.

§ 15-802(A), should continue. A.R.S. § 15-310(B). Section 15-310 does not provide specific authority for payment for the services of the independent evaluator; it does, however, provide that the independent evaluator may not be a person employed on a regular basis by the public school system, A.R.S. § 15-310(E).

Another statute, A.R.S. § 11-601(2), provides general authority to charge the county for necessary expenses incurred by the county school superintendent in the conduct of his office. All statutes relating to the same subject matter should be construed together so they constitute one consistent and harmonious law. *State v. Sweet*, 143 Ariz. 266, 270-71, 693 P.2d 921, 925-26 (1985). When we construe A.R.S. § 15-310 together with A.R.S. § 11-601(2), the question becomes, is the cost of employing an independent evaluator a necessary expense of the county school superintendent.

In *Pinal County v. Nicholas*, 20 Ariz. 243, 179 P. 650 (1919), the county board of supervisors rejected a claim for expert witness services provided in a forgery case. The county attorney had employed an expert to examine the signature in question and to testify in court. The applicable statute provided that all expenses necessarily incurred by the county attorney in criminal cases arising within the county were charges against the county. *Id.* at 244-45, 179 P. at 650. The court reasoned that:

[T]he county attorney is vested by the statute with the power to obligate the county to pay for the services of an expert witness, when he deems it necessary to employ one in a criminal case, yet he may not bind or charge the county beyond what is reasonably necessary, and certainly he may not bind the county for expert services beyond the reasonable value thereof. In the exercise of the power he may not act arbitrarily and capriciously.

Nicholas, 20 Ariz. at 248, 179 P. at 651. The court held that the county attorney had authority to employ the expert and to bind the county for the services rendered. *Id.* at 249, 179 P. at 652.

The county school superintendent, like the county prosecutor in *Nicholas*, is a county officer with a duty to hire an expert, once he has determined the need. In the superintendent's situation, a statute specifically mandates that he employ an independent evaluator. The *Nicholas* rationale answers the question posed above. The reasonable cost of employing an independent evaluator pursuant to A.R.S.

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§ 15-310(B) is a necessary expense of the county school superintendent pursuant to A.R.S. § 11-601(2).

An alternative analysis also supports our conclusion. Counties possess only those powers expressly conferred or necessarily implied from statute. *LaPaz County v. Yuma County*, 153 Ariz. 162, 165, 735 P.2d 772, 775 (1987). Counties act through their officers. *Bone v. Bowen*, 20 Ariz. 592, 597, 185 P. 133, 135 (1919). The Legislature has not authorized the county school superintendent to collect fees or reimbursements for most of the services he provides. See A.R.S. §§ 11-511 and 15-301 to -310. The statutory exception, A.R.S. § 15-308, requires a school district to reimburse the county school superintendent for educational services of an accommodation school contracted for by the district. In contrast to the specific reimbursement authorization of section 15-308, section 15-310 does not expressly or impliedly authorize a county school superintendent to charge parents for the independent evaluation of a home-schooled student.

We conclude, therefore, that the reasonable cost of an independent evaluation of a home-schooled student's academic progress is a charge against the county as a necessary expense incurred in the conduct of the office of the county school superintendent.

Sincerely,



BOB CORBIN
Attorney General

BC:LSP:SS/ksl